

**Litton Financial Printing Division, a Division of
Litton Business Systems, Inc. and Printing Specialties
and Paper Products Union, District
Council No. 1, Local 777. Case 32-CA-3036**

June 12, 1981

DECISION AND ORDER

Upon a charge filed on September 4, 1980, by Printing Specialties and Paper Products Union, District Council No. 1, Local 777, herein called the Union, and duly served on Litton Financial Printing Division, A Division of Litton Business Systems, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 32, issued a complaint on September 30, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 2, 1980, following a Board election in Case 32-RD-170, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about August 1, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On or about October 17, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint. On October 22, 1980, an amendment to complaint was issued by the Regional Director to which Respondent filed no answer.

On January 5, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 9, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, the Union filed a "Joinder to the Motion for Sum-

mary Judgment" in which it requested an award of attorney's fees and costs. Respondent then filed a response to the Notice To Show Cause. Thereafter, the Union filed a "Motion to Strike Response from Employer."

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent denies the validity of the Union's certification and asserts that the election should have been set aside because of Union misconduct. In its response, Respondent indicates that it opposes the Motion for Summary Judgment for the reasons set forth in its exceptions to the Hearing Officer's report in Case 32-RD-170, described below, and also opposes the Union's request for attorney's fees and costs made in the Union's "Joinder to Motion for Summary Judgment."²

A review of the record herein, including that in Case 32-RD-170, reveals that an election was conducted on August 17, 1979, pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 32 on July 26, 1979. Of approximately 60 eligible voters, 28 cast ballots for, and 27 cast ballots against, continued representation by the Union. There were no challenged ballots. Respondent filed objections alleging, *inter alia*, that the Union coerced and made material misrepresentations to employees. Following investigation of the objections the Acting Regional Director issued his Report and Recommendations on Objections in which he recommended that Objections 1, 2, and 3, involving alleged misrepresentations and threats concerning a pension plan, be scheduled for hearing and that Respondent's remaining objections be overruled in their entirety. Respondent filed exceptions and, on January 28, 1980, the Board issued its Order adopting the Acting Regional Director's recommendations. Following a hearing, the Hearing Officer, on April 3, 1980, issued his Report on Objections in which he recommended that Objections 1, 2, and 3 be overruled as he found no union misrepresentations or threats involving the pension plan which warranted setting aside the election. Respondent filed exceptions to this report. On July 2, 1980, the Board found the exceptions without merit and issued a Decision and Certification of Representative.³

¹ Official notice is taken of the record in the representation proceeding, Case 32-RD-170, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

² The Union's motion to strike Respondent's response is hereby denied and the Union's request for cost and fees is also denied as a reimbursement order is not justified under *Heck's Inc.*, 215 NLRB 765 (1974), and *Tiddee Products, Inc.*, 194 NLRB 1234 (1972).

³ Not reported in volumes of Board decisions.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁴

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a New York corporation with an office and place of business in Santa Clara, California. At all times material herein, it has been engaged in the wholesale printing and distribution of financial documents. During the 12 months preceding issuance of the amendment to the complaint, Respondent in the course and conduct of its business operations purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California.⁵

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Printing Specialties and Paper Products Union, District Council No. 1, Local 777, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer at its facility located at 2260 De La Cruz Blvd., Santa Clara, California; excluding all other employees, office clericals, guards and supervisors as defined in the Act.

2. The certification

On August 17, 1979, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 32, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 2, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about July 29, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 1, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since August 1, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its oper-

⁴ See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁵ Respondent failed to file an answer to the complaint amendment which alleged the value of goods or services Respondent purchased or received from outside the State of California.

ations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Litton Financial Printing Division, A Division of Litton Business Systems, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Printing Specialties and Paper Products Union, District Council No. 1, Local 777, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Employer at its facility located at 2260 De La Cruz Blvd., Santa Clara, California; excluding all other employees, office clericals, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 2, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 1, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Litton Financial Printing Division, A Division of Litton Business Systems, Inc., Santa Clara, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Printing Specialties and Paper Products Union, District Council No. 1, Local 777, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees employed by the employer at its facility located at 2260 De La Cruz Blvd., Santa Clara, California; excluding all other employees, office clericals, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Santa Clara, California, location copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment

with Printing Specialties and Paper Products Union, District Council No. 1, Local 777, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by us at our facility located at 2260 De La Cruz Blvd., Santa Clara, California; excluding all other employees, office clericals, guards and supervisors defined in the Act.

LITTON FINANCIAL PRINTING DIVISION,
A DIVISION OF LITTON BUSINESS SYSTEMS, INC.